

APPEAL NO. 032298
FILED OCTOBER 21, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 031290, decided July 7, 2003, the Appeals Panel affirmed the determinations of the hearing officer, that the appellant's (claimant) injury sustained on _____, does extend to and include an injury to the lumbar spine and left ankle but does not extend to and include thoracic outlet syndrome, an injury to the cervical spine, thoracic spine, and both shoulders, and that the employer tendered a bona fide offer of employment (BFOE) to the claimant, entitling the respondent (carrier) to adjust the post-injury earnings (PIE). Appeal No. 031290, *supra*, also noted that the disability finding was not appealed and had become final. We reversed and remanded the determination that the carrier was entitled to adjust the claimant's temporary income benefits by the amount deemed to be for PIE from December 12, 2002, through the date of the contested case hearing (CCH) and remanded this determination for an explanation of why the carrier is entitled to make such adjustment beginning December 12, 2002, or a determination of a new time period based on the evidence in the record. A CCH on remand was held in (city 1), Texas, with (hearing officer) presiding as hearing officer. The hearing officer noted that the record from the previous hearing was complete, therefore, no further hearing was necessary and none was held. The hearing officer noted that the record on remand was closed on August 1, 2003. The hearing officer determined upon remand that the carrier was entitled to adjust PIE from November 15, 2002. The claimant again seeks review of the prior determinations, affirmed by the Appeals Panel, regarding extent of injury and appeals the determination on remand that the carrier is entitled to adjust PIE from November 15, 2002, through the date of the CCH on remand. The appeal file does not contain a response from the carrier.

DECISION

Affirmed.

We decline to revisit those portions of our Decision in Appeal No. 031290, *supra*, which affirmed the extent of injury. Texas Workers' Compensation Commission Appeal No. 990360, decided March 22, 1999. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6(g) (Rule 129.6(g)) provides that a carrier may deem the wages offered by an employer through a BFOE to be PIE, as outlined by Rule 129.2 on the earlier of the date the employee rejects the offer or the seventh day after the employee receives the offer of modified duty unless the employee's treating doctor notifies the carrier that the offer made by the employer is not consistent with the employee's work restrictions. On remand the hearing officer found that the claimant received the BFOE on November 8, 2002, and that November 15, 2002, is the seventh day from which the carrier may deem the wages offered by the employer as PIE. The hearing officer then concluded that the carrier was entitled to adjust the post-injury weekly earnings from November 15, 2002,

through the date of the CCH. The hearing officer properly applied Rule 129.6(g) to the facts as determined in this case. We conclude that the hearing officer's determinations in this regard are supported by the record and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBERT PARNELL
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231-4813.**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge